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DEC 8 197

MICHAEL RODAK, JR.,

IN THE

Supreme Court of the United States

October Term, 1972

No. 662

JAN T. BATA, Individually and as Representative of the Estate of Jan A. Bata, Deceased

Petitioner

v.

THOMAS J. BATA

and

CENTRAL-PENN NATIONAL BANK OF PHILADELPHIA

Respondents

REPLY TO RESPONDENT THOMAS J. BATA'S BRIEF IN OPPOSITION

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Respondent's Brief in Opposition states in part, as the first reason for his plea that the petition for Writ of Certiorari be denied, that

> "No other litigants will be in any way affected by the judgment below"

Respondents Brief Page 8 Section I

To prepare for this assertion, respondent refers to the "prior Judgment and decree directing specific enforcement of a comprehensive settlement agreement between the parties"

Respondents Brief Page 2 Line 16 and Page 3 Line 14

This reference to prior decree is a misstatement. It is a clear and definite misstatement. The prior decree and judgment was limited to the specific enforcement of the escrow, and did not encompass the enforcement of the multiple documents of 1962.

This was made clear and specific by the Courts below in the February 3, 1970 decision. Appendix A page 30 b. The court then stated, in part, at line 10,

> "Violations of other terms of the 1962 agreement . . . were not made the subject of the September 9, 1965 judgment entered by this court on which the decree was founded."

The appellant defendant has never had an opportunity to present evidence, or to have due process in any respect, upon the issues presented in the October 5, 1971 supplementary decree, (Appendix A Page 47 b) or upon the substantial basic farreaching violations of the 1962 agreements by the appellee plaintiff, he having been first barred on the basis that the action was limited to the escrow portion, as the court stated:

> "It may be that defendant has a cause of action arising out of same, but not in this action. Any breach of the settlement agreement must stand on its own merits."
>
> Appendix A Page 30 b line 29

Then, by issuing suddenly an ex parte rule, and then permitting appellee plaintiff to amend, and to add an entirely new comprehensive cause of action, and in entering a summary decree upon that amended complaint, appellant was foreclosed completely without due process.

It is respectfully submitted that such a violation of due process by the courts below, to the extreme advantage of a plaintiff in possession and control of a five hundred

million dollar financial and industrial empire, and bearing down upon a handicapped and weak defendant, is a matter which affects all litigants in all of the courts below.

In fact, the instant violation of due process in the courts below is so extreme that it affects the entire scope of the system of justice in the courts below when weak defendants face very powerful opponents, and is contrary to the decisions of this court, as cited in appellants petition, and uncontroverted by appellee's brief in opposition.

It is submitted that the constitutional right of due process was designed and intended as a safeguard against such inequity and such injustice, and this court has so held in the decisions cited in the petition.

The extremity of the earlier false arrest and long jailing of the deceased defendant, until released by the New York Court of Appeals, is a clear and unmistakeable confirmation of the ruthless lengths to which the powerful plaintiff will go, and of the need for ultimate appeal and review, *Thomas J. Bata* v. *Jan A. Bata*, 309 N.Y. 213, 97 N.E. 2d 757 (1951).

CONCLUSION

It is respectfully submitted that the application for a Writ of Certiorari to the Supreme Court of Pennsylvania be granted.

(s) HAROLD E. STASSEN
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December 8, 1972

(s) JOSEPH N. BONGIOVANNI, JR.
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